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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,250	06/25/2003	John T. Ulman	PPC-5006	3681

27777 7590 11/23/2005

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EXAMINER

BOGART, MICHAEL G

ART UNIT PAPER NUMBER

3761

DATE MAILED: 11/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/603,250	<b>Applicant(s)</b> ULMAN, JOHN T.	
	<b>Examiner</b> Michael G. Bogart	<b>Art Unit</b> 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 October 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17 is/are allowed.
- 6) ☒ Claim(s) 1-12 and 14-16 is/are rejected.
- 7) ☒ Claim(s) 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Specification***

The abstract of the disclosure is objected to because it exceeds 150 words. Correction is required. See MPEP § 608.01(b).

### ***Claim Rejections – 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3-5, 7, 8, 11 and 12 are rejected under 35 U.S.C. § 102(e) as being anticipated by Brisebois (US 2002/0143311 A1)(hereinafter: '311).

Regarding claim 1, '311 teaches a sanitary napkin (100) comprising:

a main body (101), the main body (101) comprising a fluid-permeable cover layer (116), a liquid-impervious barrier layer (41, 118) and an absorbent system (120) intermediate the cover layer (116) and the barrier layer (118), wherein the main body (101) comprises a front portion (110), a rear portion (112) and a center portion (114) intermediate the front portion (110) and the rear portion (112), and wherein the front portion (110) extends laterally to at least one outermost

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front distal point (20) and the rear portion extends laterally outward to at least one outermost rear distal point (20); and

a side flap (20) projecting laterally outward from the absorbent system (120), extending laterally outward from a proximal edge (102, 104) of the center portion (114) and adapted to be folded over a crotch portion of a user's undergarment in use, the side flap (20) extending laterally outward from the proximal edge (102, 104) to a distal end, wherein the distal end (20) is not substantially laterally outward from the at least one outermost front distal point (20) and the distal end (20) is not substantially laterally outward from the at least one outermost rear distal point (20), and wherein the at least one outermost front distal point (20), the at least one outermost rear distal point (20), and the side flap (20) are each positioned on a single side of a longitudinally extending center line (106) of the sanitary napkin (100); and

wherein said side flap (20) is structured and arranged to secure said sanitary napkin (100) to said user's undergarment (202, 204) when said flap (20) is folded over said crotch portion of said user's undergarment (202, 204)(see figures 3 and 6, below).

Regarding claims 3 and 8, Brisebois teaches that the flap (20) is, at least in part, structurally isolated from the front portion (110) by an anterior notch, and the flap (20) is, at least in part, structurally isolated from the rear portion (112) by a posterior notch. The asymmetric notches are defined as the more acute than 90° angle of the intersection between side flap (20) and proximal edge (102, 104).

Regarding claim 4, Brisebois teaches that the side flap (20) projects outward to at least one outermost distal point of the flap (20), and wherein the sanitary napkin (100) further comprises an anterior notch defined by an anterior notch boundary that extends

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continuously from the at least one outermost front distal points (20) to the at least one outermost distal points of the flap (20), and wherein the at least one outermost distal points of the flap (20) are located on the single side (102, 104) of the longitudinally-extending centerline (106)(see figure 6).

Regarding claim 5, Brisebois teaches that the anterior notch boundary includes portions that are laterally inward from the outermost front distal point (20)(figure 6).

Regarding claim 7, Brisebois teaches a flap positioning adhesive (42) is on the bottom surface of the liquid impervious barrier layer (41)(figure 10).

Regarding claim 11, Brisebois teaches a cover layer (116) and barrier layer (41, 118) which each extend homogeneously across the proximal edge (102, 104) from the main body (101) to the flap (20).

Regarding claim 12, '311, teaches a somewhat resilient member (20)(¶ 0052).

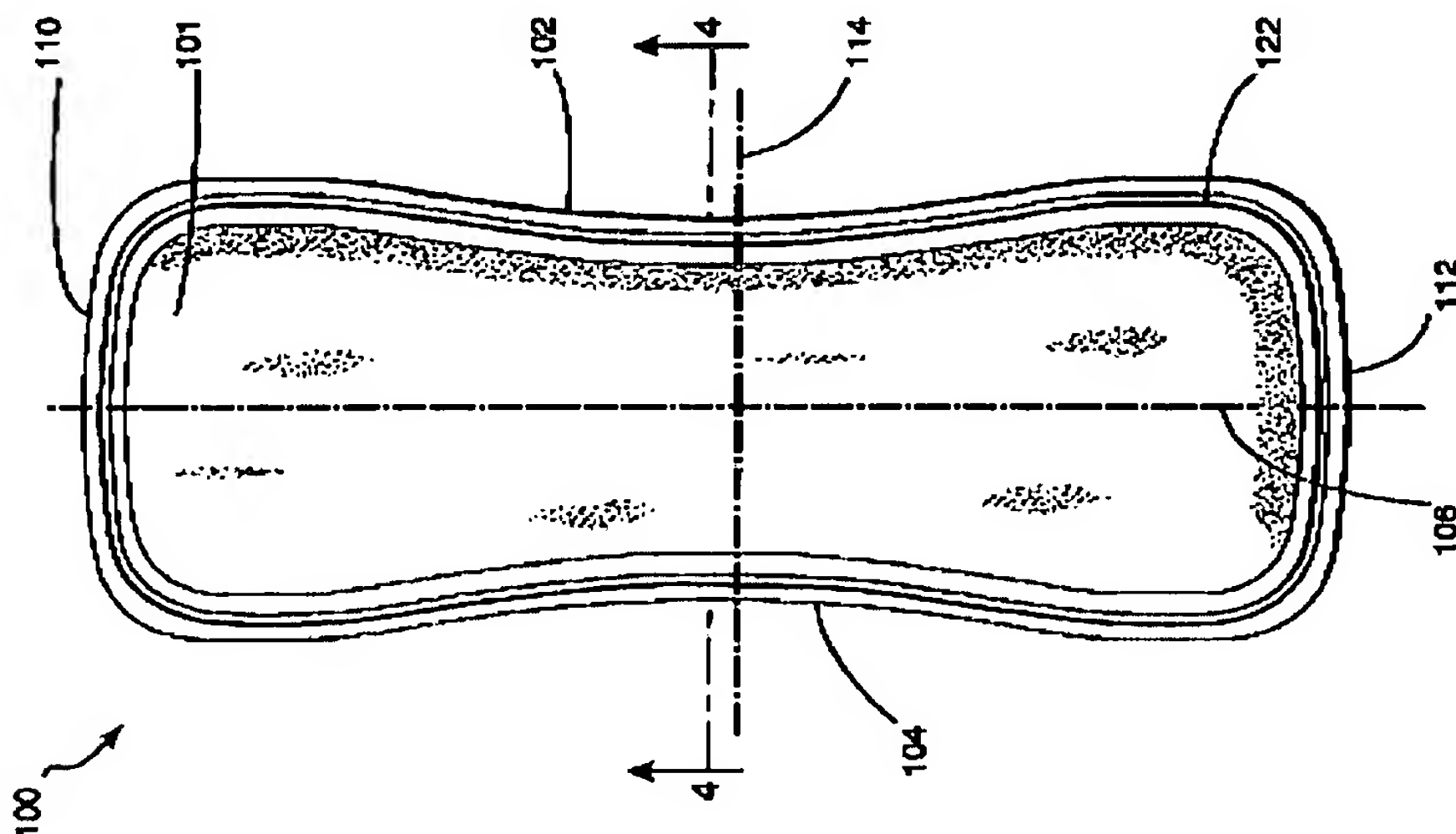
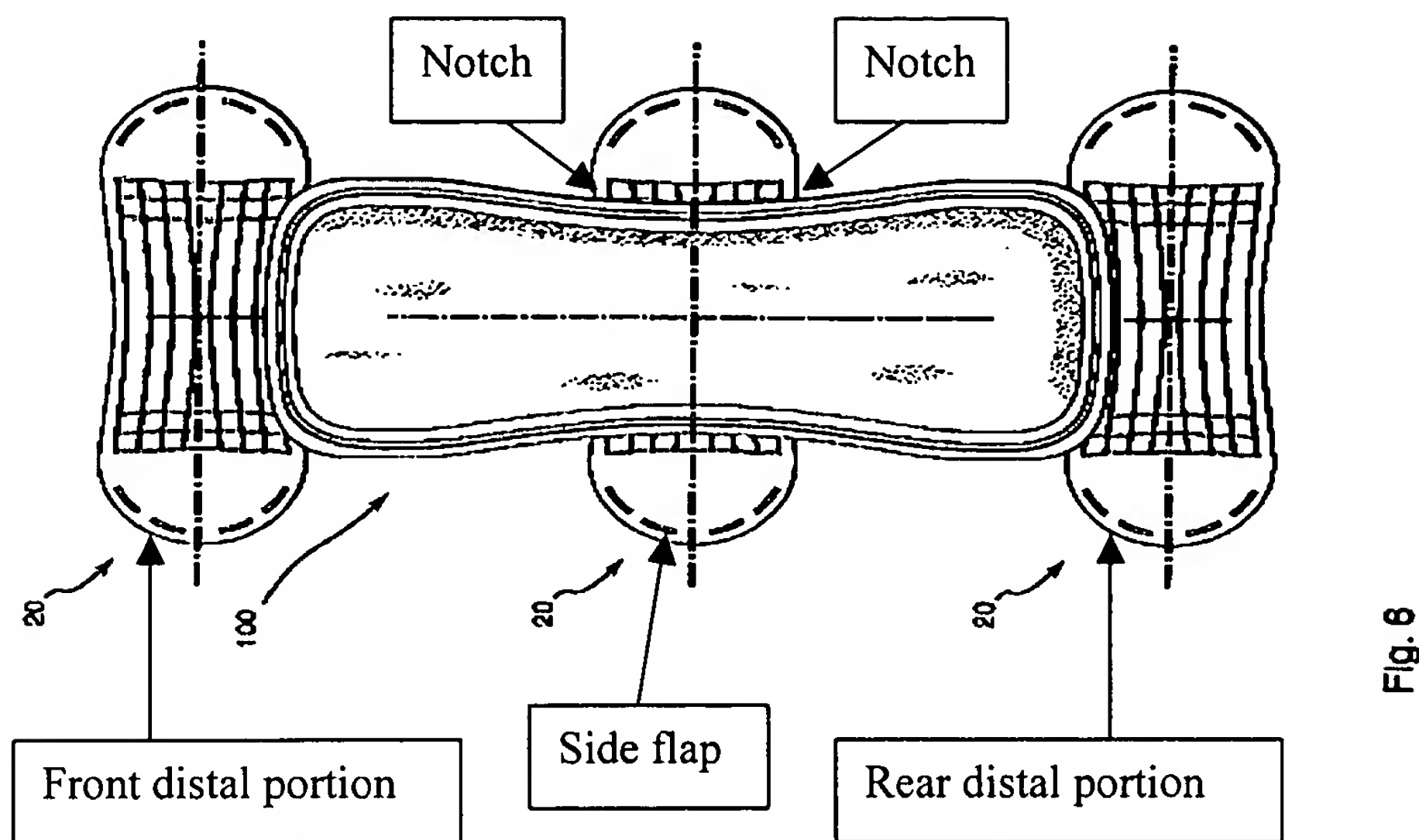


Fig. 3



### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 6, 9, 10 and 14-16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Brisebois (US 5,718,699 A).

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Brisebois does not provide specific dimensions for the notch depth or span. The reference does not expressly disclose a flap free of adhesive.

Mere modification of the relative size of something in the prior art is not sufficient to patentably distinguish a claimed invention from the prior art.

*In Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device. MPEP § 2144.04.

In the instant case, the claimed dimensions do not appear to be critical, nor is there an unexpected result shown from these specific dimensions.

Regarding the adhesive, it would have been obvious at the time of the invention for one of ordinary skill in the art to not add the adhesive to the flap of Brisebois in order to reduce the cost of manufacturing the article.

#### ***Allowable Subject Matter***

Claims 13 and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

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The art of record does not teach or fairly disclose a resilient element separated from a flap along a hinge line.

### *Response to Arguments*

Applicant's arguments with respect to claims 1-8, 11 and 14 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments filed 03 October 2005 concerning the '311 reference have been fully considered but they are not persuasive.

Regarding the application of the '311 reference, applicant asserts that the same structure (20) cannot constitute two different elements (i.e. side napkin 20 and the side flap 20) at the same time. The rejection has been clarified to show that the center side flap is distinct from the side flaps at the front and rear ends (see figure 6, supra). Applicants further submit that the liner (20) disclosed in the '311 application fails to disclose a flap adapted to be folded over a crotch portion of a user's undergarment in use. This argument is not persuasive because the reference expressly state in the abstract that the panty liner (20) is intended to be folded about the longitudinal side edges of the crotch portion of an undergarment (see figure 8).

### *Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).



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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

In the event the examiner is not available, the Examiner's supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for formal communications. For informal communications, the direct fax to the Examiner is (571) 273-4933.

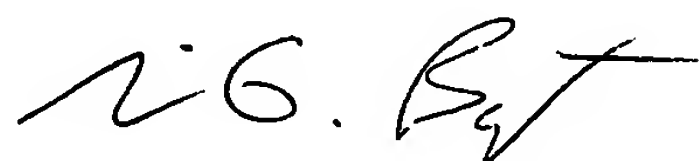
Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, appearing to read "M. Bogart".

Michael Bogart  
15 November 2005

**TATYANA ZALUKAEVA**  
**SUPERVISORY PRIMARY EXAMINER**

A handwritten signature in black ink, appearing to read "Tatyana".